IN THE SUPREME COURT

APPEAL FROM THE COURT OF APPEALS
Michael J. Talbot, Presiding Judge

KENNETH KARACZEWSKI
Plaintiff-Appellee,

v

Docket no. 129825

FARBMAN STEIN & COMPANY
NATIONWIDE MUTUAL INSURANCE COMPANY
Defendants-Appellants.
_____/

REPLY BRIEF ON APPEAL - APPELLANTS

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STATEMENT OF THE BASIS FOR THE JURISDICTION OF THE COURT[1]

MCR 7.301(A)(2) and the second sentence of MCL 418.861a(14) give the Court authority to review *Karaczewski v Farbman Stein & Co*, unpublished opinion of the Court of Appeals, decided on October 18, 2005 (Docket no. 256172).

The application for leave to appeal and filing fee were filed with the Court on (Friday) November 4, 2005.

[1] This is the same statement of the basis for the jurisdiction of the Court that was made in the *Brief on appeal - Appellants*.

STATEMENT OF QUESTION PRESENTED[2]

I

DOES THE BOARD OF MAGISTRATES HAVE SUBJECT MATTER JURISDICTION BECAUSE THE EMPLOYEE WAS NOT A RESIDENT OF MICHIGAN WHEN INJURED IN FLORIDA?

Plaintiff-appellee Karaczewski answers "Yes."

Defendants-appellants Farbman - Nationwide answer "No."

Court of Appeals answered "Yes."

Workers' Compensation Appellate Comm answered "Yes."

Board of Magistrates answered "Yes."

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[2] This is the same question that was propounded in the *Brief on appeal - Appellants*.

STATEMENT OF FACTS[3]

Kenneth Karaczewski was injured while working for Farbman Stein & Company in Florida where he was living with his wife and daughter. (11a)

Karaczewski then filed an application for mediation or hearing with the Michigan Bureau of Workers' and Unemployment Compensation claiming compensation from Farbman by the terms of the Michigan Workers' Disability Compensation Act of 1969, MCL 418.101, et seq. (1a, 3a) Farbman appeared and contested this. (4a)

After mediation, the case was remitted for a hearing and disposition by the Board of Magistrates.

The Board continued jurisdiction to hear the claim after recognizing the facts that Karaczewski and Farbman had agreed upon and considering briefs which were filed on the question about subject matter jurisdiction. *Karaczewski v Farbman Stein & Co*, unpublished order and opinion of the Board of Magistrates, decided on November 4, 2002 (Docket no. 110402077). (12a)

The Workers' Compensation Appellate Commission affirmed. *Karaczewski v Farbman Stein & Co*, 2004 Mich ACO #133. (13a, 19a)

The Court of Appeals granted leave to appeal only to consider the question of the subject matter jurisdiction, *Karaczewski v Farbman Stein & Co*, unpublished order of the Court of Appeals, decided on November 4, 2004 (Docket no. 256172) (21a), and affirmed. *Karaczewski v Farbman Stein & Co*, unpublished opinion of the Court of Appeals, decided on October 18, 2005 (Docket no. 256172). (25a-26a)

The Court granted leave to appeal and directed briefing "whether appellants' proposed overruling of *Boyd v W G Wade Shows*, 443 Mich 515 (1993) is justified under the standard for applying stare decisis discussed in *Robinson v City of Detroit*, 462 Mich 439,

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[3] These are the same facts that were recited in the *Brief on appeal - Appellants*.

463-468 (2000)." *Karaczewski v Farbman Stein & Co*, 474 Mich 1087; 711 NW2d 351 (2006). (27a)

ARGUMENT

I

OVERRULING THE DECISION IN THE CASE OF *BOYD v W G WADE SHOWS*, 443 MICH 515; 505 NW2d 544 (1993) WILL NOT PRODUCE PRACTICAL REAL-WORLD DISLOCATIONS.

Overruling the decision in the case of *Boyd v W G Wade Shows*, 443 Mich 515; 505 NW2d 544 (1993) does not involve the rule that an employee may claim compensation by the terms of the law of the state in which the injury occurred regardless of the state in which the employee was living and regardless of the state in which the employee had been hired. An employee who is injured in Michigan can still claim compensation in Michigan by the terms of the Michigan Workers' Disability Compensation Act of 1969, MCL 418.101, et seq., even though a resident of Ohio or having been hired in Illinois. An employee who is injured in Florida can still claim compensation in Florida by the terms of the Florida Workers' Compensation Law, Fla Comp L 440.01, et seq., even though a resident of Michigan or having been hired in Michigan.

Overruling *Boyd* only means that the employee who is injured in another state can claim compensation there and then come to Michigan and claim compensation by the terms of the law here — the WDCA — under two conditions instead of just one. The two conditions are those established by MCL 418.845, which are that the employee was "a resident of this state at the time of injury" and that the "contract of hire was made in this state."

There cannot be any chaos or practical dislocations of the kind described by the Court in the case of *Robinson v City of Detroit*, 462 Mich 439, 463-466, 466, n 26; 613 NW2d 307 (2000) with the two conditions of section 845 instead of just one as allowed by *Boyd*. Overruling *Boyd* will not leave any employee without redress for an injury.

Employees can always have compensation by the terms of the state in which the injury occurred even though not able to claim compensation in Michigan for a lack of one or the other of the two conditions of section 845.

Overruling *Boyd* will not create any confusion in where to present a claim for compensation. The first place for presenting a claim for compensation will remain the state in which an employee was injured. People and their lawyers routinely consult the laws of the state in which an injury occurred first. The laws of the United States are then considered. The laws of the state where an injured employee lives might be considered next. But the law of states other than where the employee was injured or living is always an afterthought. It was an afterthought for Karaczewski who claimed compensation in Florida by the terms of the Florida Workers' Compensation Law first and thought of coming to Michigan with this claim only after exhausting those benefits.

Overruling *Boyd* will not create any inconvenience. It may be convenient to claim compensation in the state in which an employee was injured as witnesses are there. And it may be convenient to claim compensation in the state in which an employee is living as the claimant-employee is there and the medical care and witnesses are there too. However, it is difficult to see the convenience from *Boyd* which allows a claim in Michigan when the employee was neither injured here nor living here. *Radeljak v DaimlerChrysler Corp*, 475 Mich 598, 605-606; - NW2d - (2006).

And the consequences from overruling *Boyd* are entirely different from *Knox v Lee*, 79 US (12 Wall); 20 LEd 287 (1870), *In re Constitutionality of 1972 PA 294*, 389 Mich 441; 208 NW2d 469 (1973), and *Massey v Secretary of State*, 457 Mich 410; 579 NW2d 862 (1998).[4] Overruling *Knox*, *In re Constitutionality of 1972 PA 294*, and *Massey* would invalidate a statute exactly as written. In each of the cases, a statute was sustained exactly

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[4] These cases have been cited as examples of the chaos and practical dislocation that could preclude overruling a decision that is thought to have been wrongly decided. *Robinson*, p 466, n 26.

as written after rejecting arguments that there was some conflict with a provision of the United States Constitution or the Michigan Constitution of 1963. Overruling *Boyd* would not invalidate section 845 as written. Overruling *Boyd* would actually *restore* section 845 as written as the Court had eschewed the text and sustained the earlier decision in the case of *Roberts v IXL Glass Co*, 259 Mich 644; 244 NW 188 (1932), which actually expunged the text "a resident of this state at the time of injury" and the text "and" from section 845.

Overruling *Knox*, *In re Constitutionality of 1972 PA 294*, and *Massey* would invalidate all of the transactions that had already occurred by the terms of the statutes for overruling would mean that the laws were void from the time of the putative enactment as unconstitutional. Overruling *Boyd* would not necessarily invalidate the disposition of any claim that was previously filed as *Boyd* did not involve the validity of section 845. *Boyd* only involved the meaning of section 845.

The character and the scope of the transactions that have already occurred by the terms of the statutes in the cases of *Knox*, *In re Constitutionality of 1972 PA 294*, and *Massey* is quite significant. Those statutes involved regular and basic events in the life of every citizen of buying and selling, moving about, and voting. The statutes that were involved in the case of *Knox* authorized paper money or "greenbacks" as the medium of exchange. The statutes involved in the case of *In re Constitutionality of 1972 PA 294* required insurance for every car and every truck owned and used to get about each day in Michigan. And the statutes involved in the case of *Massey* limited who might stand for election to public office.

Overruling *Knox* would produce financial chaos by reducing the paper money printed by the United States to simply quaint paper images of former Presidents and luminaries. All prior transactions would be suspect as debts could remain unsatisfied by prior payment in cash, which now might not be money. It would effect a repudiation of the debt of the United States itself and all that implies for the domestic and world markets.

Overruling *In re Constitutionality of 1972 PA 294* would mean drivers could insist on the reimbursement of premiums paid on auto no-fault insurance that had been paid by the terms of a contract that was now void. And insurers might insist on the repayment of all those benefits that had been paid for the same reason. This does not even mention the problem with the lawsuits that had been ostensibly barred by the statutes. And it would be impossible to vacate all of those elections after *Massey* was overruled.

The scope of the transaction that is the subject of the case of *Boyd* is not quite as significant. While acutely important to injured employees and the employers responsible for compensation, the subject of the availability of a claim in Michigan after filing a claim in the state of injury is not as basic as money, moving about, and voting or as regular.

And perhaps the most serious consequence of overruling *Knox*, *In re Constitutionality of 1972 PA 294*, and *Massey* is that no immediate remedy could be effected. All of these cases involved the extent of the power of Congress and the Michigan Legislature to enact a law. In each case, the power was recognized and was sustained. Overruling these cases would not simply expunge a statute. Overruling would change the very power to legislate. Amendment or an entirely new statute could not be enacted to remedy the defect. An amendment to the Constitution or the Michigan Constitution of 1963 would be the only method for changing the law after overruling. Overruling *Boyd* does not involve the power of the Legislature to enact laws. Overruling *Boyd* would restore section 845 as written and leave the Legislature entirely free to amend the law it had made. Overruling *Boyd* would not require a constitutional convention as would overruling *Knox*, *In re Constitutionality of 1972 PA 294*, and *Massey*.

RELIEF

Defendants-appellants Farbman Stein & Company and Nationwide Mutual Insurance Company ask the Court to reverse the opinion of the Court of Appeals and dismiss the *Application for mediation or hearing*.

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